



Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov/public/do/PRAMain) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **Addresses** section on or before [Insert date 60 days from publication].

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, or ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person

is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0140.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 536,452.

Responses: 10,770,984.

Estimated Total Burden Hours: 1,183.

Estimated Total Burden Cost (Operating and Maintenance): \$204,654.

Description:

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 1251 of the Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. On June 17, 2010, the Departments issued interim final regulations implementing section 1251 and requesting comment. On November 17, 2010, the Departments issued an amendment to the interim final regulations to permit certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status. On November 18, 2015, the Departments issued final regulations that continue the information collections contained in the interim final regulations (29 CFR 2590.715-1251(a)(3)(i), 29 CFR 2590.715-1251(a)(2), 29 CFR 2590.715-1251(a)(3)(i))

To maintain its status as a grandfathered health plan, plans must maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain, or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

In addition, grandfathered health plans must include a statement in plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Affordable Care Act, providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan, and what might cause a plan to change from grandfathered health plan status and to file complaints. However, grandfathered health plans are not required to provide the disclosure statement every time they send out a communication, such as an explanation of benefits, to a participant or beneficiary. Instead, grandfathered health plans will comply with this disclosure requirement if they includes the model disclosure language provided in the Departments' interim final grandfather regulations (or a similar statement) whenever a summary of the benefits under the plan is provided to participants and beneficiaries.

Grandfathered group health plans that change health insurance issuers must also provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) of the final regulations are exceeded. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0140. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Advance Notice of Rescission.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0141.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 100.

Responses: 1,504.

Estimated Total Burden Hours: 18.

Estimated Total Burden Cost (Operating and Maintenance): \$196.

Description:

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 2712 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and the Department's final regulation (26 CFR 54.9815-2712, 29 CFR 2590.715-2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group, or individual insurance market, or for self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

The PHS Act section 2712 mandated a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under these interim final regulations, even if prior

notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The final regulations provide that a group health plan, or health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0141. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0147.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 2,327,850.

Responses: 72,826,994.

Estimated Total Burden Hours: 328,265.

Estimated Total Burden Cost (Operating and Maintenance): \$7,040,366.

Description:

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was signed into law on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, was signed into law on March 30, 2010 (collectively known as the “Affordable Care Act”). The Affordable Care Act amends the Public Health Service Act (PHS Act) by adding section

2715 “Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions.” This section directed the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, policyholders, and certificate holders a summary of benefits and coverage (SBC) explanation that accurately describes the benefits and coverage under the applicable plan or coverage.

Section 2590.715-2715(a)(1) requires a group health plan and a health insurance issuer to provide a written summary of benefits and coverage (SBC) for each benefit package to entities and individuals at specified points in the enrollment process. As specified in § 2590.715-2715(a)(2), a plan or issuer will populate the SBC with the applicable plan or coverage information, including the following: (1) a description of the coverage, including cost sharing, for each category of benefits identified in guidance by the Secretary; (2) exceptions, reductions, and limitations of the coverage; (3) the cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations; (4) the renewability and continuation of coverage provisions; (5) coverage examples that illustrate common benefits scenarios (including pregnancy and serious or chronic medical conditions) and related cost sharing; (6) contact information for questions; (7) for issuers, an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained; (8) for plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers; (9) for plans and issuers that provide prescription drug coverage through a formulary, an Internet address (or similar contact information) for obtaining information on prescription drug coverage; and (10) an Internet address (or similar contact information) where a consumer may review and obtain the uniform

glossary; and (11) a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) of the Internal Revenue Code and whether the plan's or coverage's share of the total allowed costs of coverage meets applicable requirements.

Because the statute additionally requires the Secretary to "provide for the development of standards for the definitions of terms used in health insurance coverage," including specified insurance-related and medical terms, the Departments have interpreted this provision as requiring plans and issuers to make available a uniform glossary of health coverage and medical terms that is three double-sided pages in length. Plans and issuers must include an Internet address in the SBC for consumers to access the glossary and provide a paper copy of the glossary within seven days upon request. Plans and issuers may not modify the glossary provided in guidance by the Departments.

Finally, "if a group health plan or health insurance issuer makes any material modification in any of the terms of the plan or coverage involved (as defined for purposes of section 102 of the Employee Retirement Income Security Act) that is not reflected in the most recently provided summary of benefits and coverage, the plan or issuer must provide notice of such modification to enrollees not later than 60 days prior to the date on which such modification will become effective." Thus, the Departments require plans and issuers to provide 60-days advance notice of any material modification in any of the terms of the plan or coverage that (1) affects the information required to be included the SBC; (2) occurs during the plan or policy year, other than in connection with renewal or reissuance of the coverage; and (3) is not otherwise reflected in the most recently provided SBC. A plan or issuer may satisfy this requirement by providing either an updated SBC or a separate notice describing the modification. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0147. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976-1, PTE 1977-10, PTE 1978-6

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0058.

Affected Public: 3,483.

Respondents: Businesses or other for-profits, Not-for-profit institutions.

Responses: 3,483.

Estimated Total Burden Hours: 871.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description:

The three prohibited transaction class exemptions (PTEs) included in this ICR, (1) PTE 76-1, (2) PTE 77-10, and (3) PTE 78-6, exempt certain types of transactions commonly entered into by “multiemployer” plans from certain of the prohibitions contained in sections 406(a) and 407(a) of ERISA. The Department determined that, in the absence of these exemptions, the affected plans would not be able to operate efficiently or to enter into routine types of transactions necessary for their operations. In order to ensure that the class exemptions for these necessary transactions meet the statutory standards, the Department imposed conditions contained in the exemptions that are information collections. The information collections consist of recordkeeping and third-party disclosures. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0058. The current approval is scheduled to expire on June 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice for Health Reimbursement Arrangements Integrated with Individual Health Insurance Coverage.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0160.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 721,438.

Responses: 9,399,428.

Estimated Total Burden Hours: 196,992.

Estimated Total Burden Cost (Operating and Maintenance): \$120,662.

Description:

The final rules removed the current prohibition on integrating Health Reimbursement Arrangements (HRAs) with individual health insurance coverage, if certain conditions are met. The following information collections are contained in the final rules: (1) Verification of Enrollment in Individual Coverage; (2) HRA Notice to Participants; (3) Notice to Participants that Individual Policy is not Subject to Title I of ERISA; 4) Participant Notification of Individual Coverage HRA of Cancelled or Discontinued Coverage; 5) Notice for Excepted Benefit HRAs. The information collection requirements are needed to notify the HRA that participants are enrolled in individual health insurance coverage, to help individuals understand the impact of enrolling in an HRA on their eligibility for the PTC, and that coverage is not subject to the rules and consumer protections of the Employee Retirement Income Security Act. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0160. The current approval is scheduled to expire on June 30, 2022.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 6th day of December, 2021.

Ali Khawar,

Acting Assistant Secretary,

Employee Benefits Security Administration,

U.S. Department of Labor.

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